IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

RSA.No. 1236 of 2006()

AS.72/2002 of PRL.S.C.,THALASSERY
OS.684/1999 of ADDL.MUNSIFF COURT, KANNUR
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APPELLANT/APPELLANT/1ST DEFENDANT

KOORUMMAL CHEMMARATHI,
D/O.KOTTAN, AGED 70 YEARS, RESIDING AT
KOORUMMAL HOUSE, NEAR ARAMPEEDIKA, NARATH AMSOM,
PALLIERI DESOM, P.O. NARATH, KANNUR.

BY ADV. SRI.V.RAJAGOPAL
SRI.V.V.VIJAYAN

RESPONDENTS: RESPONDENTS/PLAINTIFFS & DEFENDANT 2 TO 4
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1. MUNDON CHANDRI, W/O.KUNHAPPA,
AGED 55 YEARS, RESIDING AT KANNADIPARAMBA AMSOM,
DESOM, KANNUR DISTRICT.

2. MUNDON AJITHA, D/O.MUNDON CHANDRI,
AGED 35 YEARS, RESIDING AT KANNADIPARAMBA
AMSOM, DESOM, KANNUR DISTRICT.

3. MUNDON REENA, D/O.MUNDON CHANDRI,
AGED 33 YEARS, RESIDING AT KANNADIPARAMBA AMSOM,
DESOM, KANNUR DISTRICT.

4. MUNDON REENA, D/O.MUNDON CHANDRI,
AGED 26 YEARS, RESIDING AT KANNADIPARAMBA AMSOM,
DESOM, KANNUR DISTRICT.

5. KOLAPPALA KALLIANI,
W/O.DECEASED NARAYANAN, AGED 71,
NARATH AMSOM DESOM, KANNUR DISTRICT.

6. KOLAPPALA VANAJA,
D/O.KOLAPPALA KALLIANI, AGED 43,
NARATH AMSOM DESOM, KANNUR DISTRICT.

7. KOLAPPALA SUJATHA,
D/O.KOLAPPALA KALLIANI, AGED 36,
NARATH AMSOM DESOM, KANNUR DISTRICT.

8. KOLAPPALA SUMA,
D/O.KOLAPPALA KALLIANI, AGED 30,
NARATH AMSOM DESOM, KANNUR DISTRICT.

9. M.VINODAN, S/O.MUNDON CHANDRI,
AGED 29 YEARS, P.B.163, SHARJAH, U.A.E.

10. MUNDON SREEJA, D/O.MUNDON CHANDRI,
AGED 28 YEARS, K.P.X 144, NEAR NOONHERI,
L.P.SCHOOL, P.O. CHELERI, KANNUR DISTRICT.

11. K.BALAKRISHNAN, S/O.KOLAPPALA KALLIANI,
AGED 34, P.B.NO.14662, DUBAI, U.A.E.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 12/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

R.S.A.NO.1236 OF 2006

DATED THIS THE 12th DAY OF FEBRUARY, 2007

JUDGMENT

Appellant was the appellant in A.S.72/02 and first defendant in O.S. 684/99 on the file of Munsiff Court, Kannur. Plaint schedule property admittedly originally belonged to Mundon Kottan. Kottan had five children including the appellant. They are Kunhiraman, Narayanan, Kunhappa, Madhavi and appellant. Fourth respondent is the widow and respondents 5 to 8 and 11 are the children of Narayanan. First respondent is the widow and respondents 2 to 4 and 9 and 10 are the children of Kunhappa. Kunhiraman and Madhavai, the co-owners assigned their right in favour of appellant under Ext.A1 sale deed dated 15.5.87. Therefore, apart from her 1/5th share, appellant also obtained 2/5 share of Kunhiraman and Madhavi. Respondents being the legal heirs of Narayanan and Kunhappa filed the suit seeking partition and separation of their shares. Appellant contended that Narayanan and Kunhappa had also agreed to assign their right in her favour and though no separate document was executed, they had orally released their right in favour of appellant and therefore respondents are not entitled to claim any share.

2. Learned Munsiff on the evidence of PW1 and Exts.A1 to A5 and B1 to B18 held that appellant obtained only the rights of Kunhiraman and Madhavi and not the rights of Narayanan and Kunhappa and therefore she has only 3/5 shares in the plaint schedule property. Though appellant had contended that Narayanan is not dead, learned Munsiff on the evidence found that it is admitted case that Narayanan was not heard since 1982 when he left to Shabarimala and therefore as claimed by respondents he is presumed to be no more. So also though appellant pointed out that respondents 1 and 4 are not respectively the widows of Kunhappa and Narayanan, relying on Exts.A4 and A5 identity cards, learned Munsiff held that they are the widows of Kunhappa and Narayanan and other respondents are their children and as a group they are entitled to 2/5 shares, which originally belonged to Narayanan and Kunhappa. A preliminary decree for partition was passed. Appellant challenged the decree and judgment before Sub Court, Thalassery in A.S.72/02. Learned Addl. Sub Judge on re-appreciation of evidence confirmed the decree and judgment and dismissed the appeal. It is challenged in this second appeal.

3. Learned Counsel appearing for appellant was heard.

4. The substantial question of law raised by appellant are whether the Courts were correct in accepting Exts.A3 and A4 identity cards to establish that respondents 1 and 4 are the widows

of Narayanan and Kunhappa and whether Courts below were correct in holding that Narayanan is no more.

5. On hearing learned Counsel appearing for appellant and going through the judgments of learned Munsiff and learned Sub Judge, it is absolutely clear that Narayanan, brother of appellant had gone to Shabarimala in 1982 and since then he was not heard of by either his widow or children or sister the appellant. In such circumstances, learned Munsiff and learned Sub Judge rightly found that Narayanan is presumed to be no more as his whereabouts were not known to the near relatives for more than the requisite period. I find no reason to interfere with that finding.

6. Similarly though the fact that respondents 1 and 4 are widows of Kunhappa and Narayanan were disputed, learned Munsiff on the evidence of PW1 corroborated by Exts.A3 and A4 identity cards held that they are the widows. Even appellant did not mount the box to deny the claim of PW1 that respondents 1 and 4 are the widows. Learned Munsiff and learned Sub Judge rightly appreciated the evidence and held that they are the widows. I find no substantial question of law involving in the appeal. Appellant apart from her 1/5 share could only claim 2/5 shares of Kunhiraman and Madhavi obtained under Ext.A1. It was upheld by the Court below.

7. Learned Counsel then submitted that appellant having 3/5 shares in plaint schedule property, the residential building may

be reserved to her without valuation as the other sharers have their own houses. That is a question, to be settled at the time of passing the final decree. Appellant is entitled to raise the claim in the final decree application. If raised, learned Munsiff is to consider the question whether appellant is entitled to get the house alloted to her without valuation or if it is not possible whether appellant is entitled to get the property, where the building is situated, alloted to her in equity.

Regular Second Appeal is dismissed with the said observations.

M.SASIDHARAN NAMBIAR,JUDGE

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